

No. 12716

No. 12813

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IN THE

**United States Court of Appeals**

For the Ninth Circuit

SECURITIES AND EXCHANGE COMMISSION, APPELLANT

*vs.*

WILLIAM J. COGAN, APPELLEE

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WILLIAM J. COGAN, APPELLANT

*vs.*

SECURITIES AND EXCHANGE COMMISSION, MARKET STREET  
RAILWAY COMPANY, ET AL., APPELLEES

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CHARLES T. JONES, APPELLANT

*vs.*

SECURITIES AND EXCHANGE COMMISSION, MARKET STREET  
RAILWAY COMPANY, ET AL., APPELLEES

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WILLIAM J. COGAN AND CHARLES T. JONES, APPELLANTS

*vs.*

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RAILWAY COMPANY, ET AL., APPELLEES

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**Brief for Appellee, Market Street Railway Company**

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**Brief for Appellee, Market Street Railway Company**

There is no purpose in mere repetition of arguments made in briefs previously filed on this appeal.

The opening brief for the Securities and Exchange Commission properly sets forth the facts and the law.

**The Approval of the Amendment to the Plan to Include a Release to Standard Power by Market Street Management Was for the Best Interests of All Stockholders.**

The brief of Cross-Appellants and Appellants, William J. Cogan and Charles T. Jones, criticizes the action of the new Board of Directors of Market Street Railway Company for adopting the resolution to amend the plan to include a release of Standard Power & Light Corporation on the ground that its action was motivated by personal interest and that the members of the Board of Directors were not interested in the minority stockholders and voted such amendment merely for the purpose of facilitating the disposition of the assets of Market Street Railway Company to the advantage of a small group of stockholders who had acquired most of their stock after the investigatory proceeding had started and held their stock only for speculative purposes, so that it was within the knowledge of the Commission—or it should have been within their knowledge—that such was the fact (Brief, p. 25).

The fallacy of that argument is that the action of the Board was for the benefit of all the stockholders; not for the benefit of a small group of stockholders.

The old Board had been in control of the Company for many years. The Company sold its operating assets to the City of San Francisco more than five years ago. Although the Company has been in the process of liquidation since that time (practically all of its assets were cash or government bonds), it spent several hundred thousand dollars in carrying on its affairs. If the Company had continued for a few years more at the same rate as estab-

lished by the old Board, the assets would have been dissipated and there would have been nothing left to distribute to stockholders.

The new Board immediately cut down all unnecessary expense. It now maintains a small office with one employee. Pursuant to the terms of the order of November 21, 1950, a partial liquidating dividend has been paid to the Prior Preference stockholders of \$1,742,775 at the rate of \$15 per share.

Such distribution was made not only to the Board members who held stock of the Company, but to all stockholders. By what stretch of the imagination such action can be construed as being for the benefit of a small group of stockholders, without interest in the minority stockholders, is beyond comprehension.

On March 30, 1950, the old Board of Directors, by resolution, refused to adopt the clarifying amendment to the plan to include Standard Power in the release, after receipt of Cogan's telegram dated March 12, 1950 (P. R. 225).

The annual meeting of the stockholders was set for April 26, 1950. Time was short. A holder of 10,000 shares of prior preference stock applied to the S. E. C. for permission to solicit proxies from ten or twelve of the larger stockholders, those holding 500 shares or more. The proxy statement clearly set forth the fact that the proxies were being sought for the express purpose of electing a Board of Directors that would vote for the clarifying amendment to provide for a complete release by Market Street of Standard Gas and its subsidiaries, including Standard Power. Proxies were obtained of more than 54,000 shares of a total outstanding issue of 116,185 shares (P. R. 570-571). Apparently, the business judgment of those who were to be the only distributees of the net assets of Market Street was that their interests would be best served by a liquidation of the Company as expeditiously as possible. Their judgment must be respected. In that sense, they were motivated by personal interest and properly so.

**Conclusion.**

The order of the court below in No. 12,716, insofar as it finds that the Commission's disapproval of any provision in the plan for counsel fees for William J. Cogan is not supported by substantial evidence, and remands the proceeding to the Commission for the purpose of approving a reasonable allowance for Cogan, should be reversed.

The remaining provisions of the order of the court below in No. 12,716, and the order of the court below in No. 12,813 should be affirmed.

Respectfully submitted,

DOUGLASS NEWMAN,  
*Attorney for Appellee,*  
*Market Street Railway Company.*